

SUMMARY OF HB 4382 – 4384

These bills are limited to guardians appointed under EPIC and they apply only to settings outside of a hospital. The intention is to not affect the rights of guardians to sign a DNR in a hospital since hospitals are under a regulatory structure that is separate and distinct from other settings.

Amendments to EPIC (and not to the mental health code)

Section 5305 is about the duties of the guardian ad litem (GAL). There are two important prongs to making sure that the ward is informed of his or her right to stop a guardian from signing a DNR.

According to the Michigan Supreme Court, an individual has certain rights that survive the individual's mental incompetence. In *re Martin*, 450 Mich. 204; 538 N.W.2d 399 (1995). First, there is the common law right to informed consent. Second, there is the Constitutional right to privacy or liberty. In the *Martin* case, the individual was formerly competent. The Court stated that it is incumbent on health care providers to recognize the patient's wishes concerning refusal or withdrawal of medical treatment even if the patient is mentally incompetent.

The amendments to section 5305 recognize that this right exists. Even if a formerly competent person gave directions while competent that they currently disagree with, a health care provider must honor the patient's **current** wishes. This is true in the patient advocate designation statute; section 5305 recognizes this right as well.¹

Section 5314 is about the powers and duties of a guardian. In subsection (d), the guardian's power to execute a valid do not resuscitate order is conditioned on the guardian's compliance with his or her duty to consult with both the ward and the ward's attending physician prior to executing the order. As you can see from the language (1) the guardian must physically visit the ward no more than 14 days prior to executing the order; (2) the guardian must consult directly with the ward's attending physician about the medical conditions that warrant the do not resuscitate order; and, (3) the guardian must reaffirm the order at least once per year after performing duties (1) and (2) again.

¹ Sec. 5511.

(1) Irrespective of a previously expressed or evidenced desire, a current desire by a patient to have provided, and not withheld or withdrawn, a specific life-extending care, custody, or medical treatment is binding on the patient advocate, if known by the patient advocate, regardless of the then ability or inability of the patient to participate in care, custody, or medical treatment decisions or the patient's competency.

Amendments to the DNRPA

A do not resuscitate request is not the same thing as a do not resuscitate order. A do not resuscitate request is a forward-looking document that asks the doctor to write a do not resuscitate order under certain circumstances. (living wills) A do not resuscitate order, on the other hand, is a currently effective physician's order that binds health care providers who are subject to that attending physician's authority.

The two major changes that we have made to the DNRPA is to extend its use to (1) nursing homes and (2) guardians for incapacitated adults. We also brushed up the DNRPA in places where it needed clarification.

Why did we not include guardians appointed for developmentally disabled persons?
Answer: The mental health code limits a guardian's ability to make extraordinary medical treatment decisions absent prior authorization from the court.²

The most important protections are in the revocation section, section 10. First, the patient may revoke the do not resuscitate order regardless of whether the order was executed by the patient or by a patient advocate or a guardian. This is an important due process protection. Second, if the patient revokes orally, then the person who hears that revocation has a duty to record that revocation in writing and provide a copy of that writing to the patient's attending physician and/or the administrator of the medical facility. Third, the same procedure above applies to a guardian or a patient advocate who revokes the document. Fourth, the person who is informed of the revocation must write void on all pages of the do not resuscitate order and remove any do not resuscitate bracelet that the patient was wearing. Fifth, both the attending physician and an administrator of a medical facility have a duty to put the writing they received in the patient's medical chart.

Lastly, the revocation is binding once it has been received.

The amendment to the adult foster care act simply amends the citations to the DNRPA to include the entire DNRPA. If a worker at an adult foster care home sees that the resident has a DNR created under the DNRPA, then the worker is required to call EMS but they may give the DNR to the EMS responder. However, if the resident is in a hospice program the worker is required to call the hospice provider instead.

² MCL 330.1629 provides immunity for making decisions about extraordinary medical treatment only if the guardian has obtained a court order authorizing the decision. A guardian of a DD person does not have the authority to sign a do not resuscitate order.